

Exhibit B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Action 11 CIV 9199

U.S. BANK NATIONAL :
ASSOCIATION, as :
Indenture Trustee :

Plaintiff, :

vs. :

BARCLAYS BANK PLC, : DEPOSITION OF:
THE BANK OF NEW YORK :
MELLON, MBIA : GENE PHILLIPS
INSURANCE CORPORATION :
and ANGELO GORDON & :
COMPANY, L.P., :

Defendants. :

****CONFIDENTIAL****

TRANSCRIPT of the stenographic notes
of the proceedings in the above-entitled
matter, as taken by and before
CAROLYN CHEVANCE, a Shorthand Reporter, and
Notary Public of the State of New Jersey, held
at the office of WEIL GOTSHAL & MANGES, 767
Fifth Avenue, New York, New York, on June 18,
2012, commencing at 10:02 a.m.

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1
2 Q I take it that you also relied
3 on the data that you received from Bloomberg
4 in performing your analysis for each of the
5 securities?

6 A That's correct. We relied on
7 Bloomberg's data. For one specific security
8 we that demarcate that we relied more
9 extensively on the Trustee reports.

10 Q Is this the footnote you are
11 referencing on page BARC 3601?

12 A That's correct.

13 Q That states, "Only for this bond
14 was analysis performed in examining Trustee
15 reports, for the remainder Bloomberg data was
16 relied upon", what exactly did you mean by
17 that statement?

18 A This statement could have been
19 better worded. What is meant is that we
20 found the Bloomberg data to be sufficiently
21 reliable, based on our cross-checking of the
22 Trustee reports, so I continued using it.

23 That is true of all the bonds
24 including the L8s to an extent. There were
25 certainly instances with respect to the L8

1
2 bonds that gave us reason to want to rely
3 more heavily on the Trustee reporting
4 information, so we would have checked that.

5 Q Just to kind of quickly walk
6 through the conclusions that you have drawn
7 so I understand what this particular sheet
8 shows, so for example, the first CUSIP here
9 12513XAM4; am I correct where it says
10 5/15/2011 defaulted that that would mean that
11 PF2's conclusion is that as of May 15, 2011,
12 that particular security was defaulted
13 according to the Cedar Woods II indenture,
14 according to the language in the Cedar Woods
15 II indenture?

16 A Right, because we are not making
17 the comment that it ought to immediately be
18 classified as such.

19 We were remarking that it ought
20 to have been considered defaulted had the
21 Trustee had instantaneous knowledge at that
22 point.

23 Q I'm going to move documents now.
24 What has been previously marked
25 as Phillips Exhibit 6, it's the bulky

1
2 document with the indenture.

3 I'm going to take you to page
4 24, rather infamous at this point, the
5 definition of defaulted security.

6 Do you recall testifying earlier
7 about reviewing the definition of defaulted
8 security in connection with your analysis?

9 A I do.

10 Q Do you recall testifying that
11 you reviewed the definition of defaulted
12 security under part B with respect to CMBS
13 securities?

14 A That's correct, and potentially
15 with part A we looked through as well.

16 Q In connection with your analysis
17 you would have done an independent review of
18 the definition of defaulted security in this
19 -- in the indenture?

20 A Potentially, not in full. We
21 would have at least done a half-hearted
22 approach to looking through part 1a and
23 certainly part 1B would have received our
24 attention.

25 We may not have cross-checked

1
2 each and every bell and whistle in part 1a.

3 Q So when you said half-hearted
4 you meant in part little line, whole A, you
5 may not have cross-checked every single
6 capitalized defined term in the indenture,
7 but are you fully satisfied that you -- with
8 your review of this definition in connection
9 with your analysis and the conclusions that
10 you have made as a result of it?

11 A Yes, and it -- I'm not limiting
12 my first comment to only cross-checking
13 definitions. I'm saying generally I don't
14 know that we were familiar with the
15 definition in its entirety.

16 We are familiar with parts of
17 it, and certainly the parts that were
18 relevant to our determination.

19 Q What part was relevant to your
20 determination?

21 A We felt that part B was relevant
22 to our determination, and that certain of the
23 language in part 1a helped us gain additional
24 certainty that our analysis of part B and
25 that our approach thereto was correct.

1
2 Q Can you just point me to the
3 language in part A that you said helped you
4 gain additional certainty with respect to
5 your analysis?

6 A Certainly. There is a provision
7 in part 1.a, I believe it's towards the end
8 that says -- that describes the fact that "a
9 defaulted debt security shall cease to be a
10 defaulted security if such security has
11 resumed current payments and scheduled
12 principal in cash, including all past due
13 interest and schedule principal and the
14 collateral manager's judgement will continue
15 to make such current payments of interest in
16 cash", et cetera.

17 Q What about that made you certain
18 with respect to your analysis?

19 A It helped us gain assurance that
20 the curing mechanism that is not part of part
21 B or the lack of that curing mechanism was
22 intentional.

23 Q You briefly discussed the fact,
24 and I'm going to try to explain this as well
25 as I can, if you look at B, there is B1 and

1
2 B2, and that the definitions or the ratings
3 required in those sections overlapped, do you
4 recall that testimony?

5 A I'm not saying -- they certainly
6 overlapped but there is a potential for a
7 situation which a split rating could result
8 in a security being considered in the one
9 part, and the other part simultaneously.

10 Q Did you encounter that
11 particular potential issue in connection with
12 the analysis that you did for the Cedar Woods
13 II CDO?

14 A As I currently remember, and I
15 think this is correct, I think that was
16 considered potentially for one security,
17 maybe for two.

18 Q Do you recall which securities?

19 A I can look into it.

20 Q You don't recall sitting here
21 today which securities, if any, that may have
22 been an issue for?

23 A I think it's the final security
24 in our spreadsheet. I would love to ensure
25 that I'm correct, but I think it had a CUSIP

1
2 of SAG3, but I don't want to put my foot in
3 my mouth. I think that is correct.

4 Q Sitting here today you are still
5 fully comfortable with the conclusions that
6 you came to in your November 29, 2011 report?

7 A Yes.

8 MS. COHEN: I think we have no
9 further questions.

10
11 CONT'D EXAMINATION BY MR. CARTY:

12
13 Q Good afternoon, Mr. Phillips.
14 My name is Christopher Carty, and I'm with
15 Akin Gump and we represent Angelo Gordon in
16 this matter.

17 I have a few more questions
18 about the definition of defaulted security in
19 Phillips 6 that you were just looking at.

20 Correct me if I'm wrong, but I
21 believe you just testified that certain
22 language in portion 1a of the definition,
23 "that such collateral debt security shall
24 cease to be a defaulted security if such
25 security has resumed current payments of

1
2 interest and scheduled principal in cash;
3 excluding all passed due interest and
4 scheduled principal, and in the collateral
5 manager's judgment will continue to make such
6 current payments or interest in cash."

7 That led you to conclude that
8 Section 1b of the definition with respect to
9 a CMBS security does not allow for any
10 curing, is that your -- is that accurate?

11 A It's partially accurate. My
12 comment is not that that led me to the
13 conclusion, but rather that that lent
14 confidence to the conclusion.

15 So the language as it currently
16 reads may very well have been sufficient for
17 us to follow the language, and believe that a
18 defaulted security cannot be cured in this
19 way, aside from the RAC situation, it cannot
20 be cured in this way, and the fact that this
21 is explicit in the previous part of defaulted
22 security gave us additional confidence.

23 Q So the language in part 1b is
24 sufficient for you to conclude that a
25 defaulted CMBS security could not later be

1
2 cured?

3 MR. GEREMIA: Object to the form
4 of the question. You're
5 mischaracterizing his testimony. Are
6 you asking him to repeat what he just
7 said?

8 MR. CARTY: He can tell me.

9 A Do you mind repeating your
10 question?

11 Q I will withdraw it and ask it
12 differently.

13 So were you saying that the
14 language in part 1b by itself was sufficient
15 for you to conclude that there is no curing
16 for a CMBS security that at some point in
17 time met the definition of defaulted
18 security, and then later repaid all prior
19 interest shortfalls and continued to pay
20 interest?

21 A I think that even absent the
22 presence of part 1a, it's likely we would
23 have taken the position that a defaulted
24 security once defaulted remained defaulted.

25 However, it may be the case that

1
2 a party could argue that and absent part 1a,
3 we felt that their argument may be more
4 persuasive.

5 So we were not concerned at all
6 about this argument coming about.

7 Q Just focus on part 1b of the
8 definition of defaulted security, where in
9 part 1b does it say that a defaulted security
10 once defaulted must remain defaulted?

11 A The language doesn't say that
12 specifically. It says that a defaulted
13 security is one as to which in our clause, as
14 to which there has been a failure to pay in
15 whole or in part, there has been.

16 It doesn't preface this with
17 saying "and is still existing", and it also
18 doesn't say "or it has been cured".

19 So the fact that it has been
20 implies that to me that we continue to treat
21 it as such, there is no -- there is no
22 proviso that tells us to stop treating it as
23 such.

24 Q But part 1b doesn't say one way
25 or the other whether a CMBS security that at

1
2 one point met the definition of defaulted
3 security can or cannot be cured?

4 MR. GEREMIA: Objection to the
5 form of the question. You're just
6 arguing with him now. He already
7 answered that question.

8 MR. CARTY: I don't believe he
9 has.

10 A The language is somewhat clear,
11 it says "as to which there has been a failure
12 to pay interest." It is not saying "as to
13 which there is existing."

14 There is plentiful language in
15 part one describing situations in which a
16 defaulted security could not -- could be
17 treated other than -- in part 1a, could be
18 cured. The language -- the word "cured" is
19 specifically used.

20 Q Right, and I'm talking about
21 part 1b, and I believe you testified earlier
22 that the language in part 1b by itself,
23 without reference to part 1a would be
24 sufficient to support your interpretation?

25 A Right, and I'm again saying the

1
2 language in part B says there has been a
3 failure to pay. It doesn't say "and is
4 continuing". Even that language is in part
5 1a.

6 So in part 1a it says, "except
7 with respect to CMBS securities there is" --
8 "except with respect to CMBS there has
9 occurred and is continuing a default", that
10 language as well is not present in part B.

11 So the -- one would consider a
12 security to be defaulted under the condition
13 that there has been and there has -- to the
14 extent that there has, we continue to treat
15 it as such.

16 There is no alleviating clause
17 that requires that this failure be
18 continuing.

19 Q In your analysis of part 1b of
20 the definition of defaulted security, did you
21 rely in any way on market standards and
22 practice?

23 A Yes, we did.

24 Q In your analysis of whether
25 defaulted security pursuant to 1b could be

1
2 cured, did you rely in any way on market
3 standards and practice?

4 A No, I don't believe we did. We
5 felt that that was a clear reading of the
6 indenture, and unless one can regard the
7 interpretation of the indenture as a market
8 standard, and I think that is possibly
9 relevant to some people may not take
10 seriously the indenture, as a -- as the
11 governing document, but we did and we are
12 applying our approach relative to the
13 indenture language.

14 Q Did you ask -- did you at any
15 point ask the Trustee or any other party how
16 Section 1b of the definition of defaulted
17 security was interpreted with respect to
18 curing the security?

19 MR. GEREMIA: By "party" you
20 mean party to this lawsuit?

21 MR. CARTY: Yes.

22 Q Let me withdraw the question.
23 At any point while doing your
24 analysis did you ask the Trustee how Section
25 1b of the definition of defaulted security

1
2 was interpreted through the course of dealing
3 of this deal with respect to the curing of
4 the security?

5 A No.

6 Q Mr. Phillips, as part of your
7 analysis in your two reports in November of
8 2011, did you analyze whether an event of
9 default had occurred under the indenture?

10 A I did not.

11 Q Did you analyze whether any
12 classification issue with respect to the
13 securities had a material adverse effect on
14 any security noteholders?

15 A We did no such analysis. It's
16 reasonable to infer that, however, if you
17 were to consider certain securities defaulted
18 that that may have an adverse effect on
19 certain noteholders.

20 So it may have been inference,
21 but there was no analysis done.

22 Q At the time you did the -- your
23 report did you infer that there had been an
24 adverse effect on secured noteholders?

25 A Let me answer this differently

1
2 -- actually, let me say I don't understand
3 the difference between this question and the
4 prior one.

5 Q You testified that it's
6 reasonable to infer that, however, if you
7 were to consider certain securities defaulted
8 that may have an adverse effect on certain
9 noteholders, and I'm asking is that something
10 you did infer or sitting here right now you
11 are saying it is reasonable to infer?

12 A I can't be sure whether I
13 inferred at the time. In fairness, you are
14 asking relative to the definition of default,
15 but even -- any classification often benefits
16 certain noteholders at the expense of others.

17 So an inference is that however
18 we classify these securities, certain
19 participants maybe benefitted and others may
20 be -- let's call it hurt, not necessarily
21 damaged.

22 To the extent this is somewhat
23 of a zero some game, so to the extent we
24 classify a security as A or B or C certain
25 parties might benefit and other parties may

1
2 feel that they are -- that they are on the
3 wrong side of that.

4 Q But as of your November 29,
5 2011, report you did not do that analysis,
6 did you?

7 A No.

8 Q And since November 29, 2011,
9 have you done any analysis of whether an
10 event of default has occurred?

11 A No, we haven't.

12 Q And since November 29, 2011,
13 have you done any analysis of whether there
14 has been a material adverse effect on any
15 noteholders?

16 A We haven't done any such
17 analysis.

18 MR. CARTY: No further
19 questions.

20 MR. GEREMIA: No questions.

21 THE VIDEOGRAPHER: The time is
22 4:33 p.m. July 18, 2012. This
23 completes today's deposition of Gene
24 Phillips.

25 (Deposition was concluded at 4:33 p.m.)